STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Central Illinois Light Company d/b/a AmerenCILCO Proposed general increase in electric delivery service rates.	)	Docket No. 09-0306
Central Illinois Public Service Company d/b/a AmerenCIPS Proposed general increase in electric delivery service rates.	)	Docket No. 09-0307
Illinois Power Company d/b/a AmerenIP Proposed general increase in electric delivery service rates.	)	Docket No. 09-0308
Central Illinois Light Company d/b/a AmerenCILCO Proposed general decrease in gas delivery service rates.	)	Docket No. 09-0309
Central Illinois Public Service Company d/b/a AmerenCIPS Proposed general increase in gas delivery service rates.	)	Docket No. 09-0310
Illinois Power Company d/b/a AmerenIP Proposed general increase in gas delivery service rates.	)	Docket No. 09-0311 (Consolidated)

INITIAL BRIEF ON REHEARING OF THE AMEREN ILLINOIS UTILITIES

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I. Introduction

Central Illinois Light Company ("AmerenCILCO"), Central Illinois Public Service Company ("AmerenCIPS") and Illinois Power Company ("AmerenIP") (together, the "Ameren Illinois Utilities" or "AIU") hereby submit their initial brief on rehearing in Dockets 09-0306 – 09-0311 (Cons.). The record on rehearing establishes that the April 29 Order, as corrected by the May 6 Order, ("Order") understates the AIU's revenue requirement by approximately **$55.23 million**. The required revenue increases for the six gas and electric utilities are as follows:

AmerenCILCO Electric:	$5.34 million
AmerenCIPS Electric:	$12.46 million
AmerenIP Electric:	$24.48 million
AmerenCILCO Gas:	$2.91 million
AmerenCIPS Gas:	$2.96 million
AmerenIP Gas:	$7.08 million

For the reasons discussed herein, the Commission in its Order on Rehearing should make the following adjustments to the Order.

- The Order's adjustment to test year accumulated depreciation reserve should be reversed to remove the roll forward of the accumulated depreciation balance to the end of the pro forma period. The AIU's proposed adjustment to accumulated depreciation results in an increase in revenue of approximately **$25.9 million**.[1]

- The Order's adjustment to test year accumulated deferred income taxes (ADIT) should be reversed to remove the roll forward of the ADIT balance to the end of the pro forma period. The AIU's proposed adjustment to ADIT results in an increase in revenue of approximately **$9.6 million**.

- The Order's pension and other benefits expense should be adjusted to reflect the known and measurable change in expense booked in the 12 month period ending September 30, 2009. The AIU's proposed adjustment to pension and benefits expense results in an increase in revenue of approximately **$16 million**.

[1] The technical correction to the directional change in sign in the Order's calculation of accumulated depreciation related to pro forma plant results in a reduction in the revenue requirement of approximately $1.5 million. (See Ameren Ex. 2.0RH (Stafford Dir.), p. 11 n.3.) That deduction is reflected in the $25.9 revenue requirement increase associated with the AIU's proposed adjustment to the accumulated depreciation reserve.

- The Order's cash working capital (CWC) amount should be adjusted to reflect the amount of CWC associated with late-paying customers based on the use of 28.13 revenue collections lag days. The AIU's proposed adjustment to CWC results in an increase in revenue of approximately **$3.75 million**.

- The Public Utility Revenue Act (PURA) tax should be excluded from the AIU's revenue requirement[2] (and thus base rates) and recovered as a pass through tax in the AIU's Tax Additions tariff with an annual true up and reconciliation.

The AIU's proposed adjustments on rehearing are reflected in the schedules submitted in the AIU's August 27, 2010 response to the Post-Record Data Request, dated August 18, 2010.

II. What Is The Appropriate Application/Interpretation Of 83 Ill. Adm. Code 287.40 And 220 ILCS 5/9-211 In The Context Of Adjustments To Accumulated Depreciation Reserve?

The Commission specifically addressed the proper application and interpretation of Part 287.40 in the context of post-test year adjustments to accumulated depreciation in four recent rate cases involving major gas and electric utilities. As demonstrated by these cases, Part 287.40 permits a utility to propose adjustments to test year amounts to account for "known and measurable changes" in "plant investment" "reasonably certain to occur subsequent to the historical test year within 12 months after the filing date of the tariffs and where the amounts of the changes are determinable," as if that plant investment was placed in service during the test year. When a utility proposes such an adjustment, Part 287.40 does not mandate that the depreciation reserve for the entire historical plant balance be restated beyond the test year to the end of the pro forma period. On the contrary, such an adjustment violates the test year and matching principles reflected in Part 287.20. Likewise, Section 5/9-211 of the Public Utilities Act does not provide an exception to the test year principle to allow a "roll forward" of accumulated depreciation. The statute merely establishes a "prudence" test for including plant

[2] The technical correction of the scrivener's error for AmerenIP electric results in a reduction in the revenue requirement in the amount of $18,000. (See Ameren Ex. 11.0RH (Rev.) (Stafford Reb.), p. 20.)

investment in rate base, as the Commission also has previously found. As established by the Commission's prior decisions, the test year balance of accumulated depreciation need only reflect the increase in depreciation associated with the proposed post-test year plant, not the increase in depreciation for all embedded test year plant during the pro forma period. The Order on Rehearing should reaffirm the settled interpretation of Part 287.40 and Section 5/9-211.

A. *Part 287.40 Permits The AIU To Propose Known And Measurable Changes In Plant Investment Without Rolling Forward Test Year Accumulated Depreciation.*

As the Order recognized, Part 287.40 creates an "exception" to the test year requirement that certain costs and revenues reflect historical test year values. Order, p. 30. By providing for adjustments to historical test year costs and expenses, including changes in plant investment, Part 287.40 serves to mitigate regulatory lag. (Ameren Ex. 3.0RH (Rev.) (Fiorella Dir.), pp. 7-8.)

The AIU's selection of a test year ending December 31, 2008 is not (and never was) contested. (Id., p. 3.) As permitted by Part 287.40, the AIU proposed a pro forma adjustment for certain known and measurable post-test year capital additions to be placed in service by May 2010. (Id.) The pro forma adjustment included related adjustments to rate base and income statement associated with increases in accumulated deferred income taxes ("ADIT") and depreciation expense associated with the pro forma plant additions. (Ameren Ex. 2.0RH (Stafford Dir.), pp. 5-6.) To limit contested issues in this case, the AIU accepted Staff's proposed adjustment to test year plant to include pro forma plant additions only through February 2010. (Id., p. 5.) The Administrative Law Judges' Proposed Order ("ALJPO") in the initial phase of this proceeding accepted Staff's proposed adjustment, which included related adjustments to test year accumulated depreciation reserve and ADIT only for increases associated with the proposed pro forma plant additions through the end of February 2010. (Id.)

Regulatory lag is the delay between a change in a regulated enterprise's costs and a change in rates ordered by a regulator as a result of that change in costs. (Ameren Ex. 3.0RH (Rev.), p. 7.) Even with pro forma adjustments, a utility never fully recovers the cost of plant investment made between rate cases. (Id., p. 8; see also Ameren Ex. 4.0RH (Dane Dir.), pp. 11-12.) No party disputes that the AIU have made – and will continue to make – significant plant investment after February 2010 that they will not receive a return "on" or "of" until new rates are approved in a subsequent proceeding. (Ameren Ex. 3.0RH (Rev.), p. 7.) Part 287.40, however, permits utilities to recognize prospectively at least that portion of post-test year plant investment reasonably certain to occur so that rates can more adequately offset the costs of that investment as they are incurred. (Id., p. 8.) The result is a calculation of test year plant more representative of the level of plant investment that will exist during the rate effective period. (Id., p. 6.)

IIEC claims that a "change in plant investment requires that both increases and decreases to plant investment be taken into account." (IIEC Ex. 10.0RH (Gorman Dir.), p. 4.) AG/CUB contends that the term" plant investment" must be interpreted as "net plant," not "gross plant." (AG/CUB Ex. 1.0RH (Effron Dir.), p. 3.) But as the Commission rightly stated in defense of its order in Commonwealth Edison ("ComEd"), 07-0566, "[t]he issue is not net plant versus gross plant or the inclusion of all known and measurable changes; the issue is the date to which the historical test year base is measured." (ICC Brief, dated June 30, 2009, Commonwealth Edison Co. v. Illinois Commerce Commission, No. 2-08-0959 (Cons.), p. 10 ("ICC ComEd Br.).)[3] The effect of the pro forma adjustment is to restate the historical test year plant in service as of the end of that test year by including known and measurable post-test year plant additions, as if the additions were made during the test year. (Ameren Ex. 3.0RH (Rev.), p. 6.)

[3] The Commission's appellate brief for ComEd, Docket 07-0566, was attached as Appendix A to the AIU's Post-Hearing Reply Brief in the initial phase of this proceeding.

The AIU have not advocated the use of a "gross plant" amount in the calculation of rate base in this proceeding. Nor have the AIU failed to account for "decreases" related to the changes in "plant investment." The AIU proposed a test year "net plant" that accounted for both increases and decreases related to pro forma plant investment: historical plant in service less depreciation on historical plant as of December 31, 2008, plus pro forma plant additions less retirements less depreciation on the pro forma plant additions as of February 28, 2010. The AIU's proposed adjustment does not "effectively abandon the concept of a net plant investment," as the Order claims. Order, p. 30. Nor does Part 287.40 require that a utility automatically restate its "net plant" to the end of the pro forma period each time the utility proposes to account for a known and measurable post-test year plant addition. As discussed below, the Commission consistently and repeatedly has rejected the notion that the utility is required to "roll forward" test year accumulated depreciation in connection with a pro forma adjustment for "plant investment." The Order on Rehearing should not arbitrarily abandon that prior practice.

B. ***A Roll Forward Of Test Year Accumulated Depreciation Is Not Permissible Under Part 287.40 And Test Year Rules.***

The Order concludes that it is appropriate "to require AIU to reflect the balance of the accumulated reserve for depreciation as of February 2010 in its rate base, because AIU has included pro forma plant additions in its rate base as of February 2010." Order, p. 30. The Order comes to this conclusion, despite the fact that the Commission, in four prior rate cases, explicitly has addressed and rejected a post-test year adjustment to accumulated depreciation for embedded plant as prohibited by Part 287.40 and its test year rules. ComEd, Docket 07-0566 (Order, Sept. 10, 2008); North Shore Gas Co. and The Peoples Gas Light and Coke Co. ("North Shore/Peoples"), Docket 07-0241/0242 (Order, Feb. 5, 2008); ComEd, Docket 05-0597 (Order, July 26, 2006); ComEd, Docket 01-0423 (Order, Mar. 28, 2003).[4] As the ALJPO in this case notes, these previous decisions "effectively reject the proposition that adopting a pro forma plant adjustment necessitates updating the reserve for accumulated depreciation related to test year assets." (ALJPO, p. 30.) For the Commission to deviate from its interpretation and practice in these prior decisions, "there must be a discernable reason." (Id., p. 29.) But, as the ALJPO recognizes, there is not a "meaningful difference" between the record in this case and the records in Commission's prior decisions. (Id., p. 30.) Thus, there is "no basis to accept the proposal to make an adjustment to the reserve for accumulated depreciation for test year plant." (Id.)

As these prior decisions demonstrate (and as the Commission has argued in defense of its decision in ComEd, 07-0566), the Commission's own rules do not permit an adjustment to recognize increases in test year accumulated depreciation beyond the test year to the last date of the recognized pro forma capital additions. As explained above, an anticipated change in accumulated depreciation for embedded plant over time is not part and parcel of a "known and measurable" change in "plant investment." Nor is the change on its own based upon the type of evidence of reasonable certainty (e.g., contracts) that the Commission normally requires a utility to provide to support a pro forma adjustment. The change is simply a calculation of what the reserve may be at some future point in time beyond the test year. That the reserve may increase during the pro forma period does not make the adjustment appropriate under the Commission's rules or from a regulatory accounting perspective. The uncertainty and disagreement amongst the parties (and the Commission) on the appropriate methodology to estimate that change – not

[4] The Commission is currently defending its prior interpretations of Part 287.40 and Section 9-211 in appeals of the Docket 07-0566 and Docket 07-241/0242 Orders. The Commission has not filed pleadings in either appeal refuting its positions in the wake of the Order in this proceeding. Indeed, two days after the evidentiary hearing in this proceeding on rehearing, the Commission vehemently defended its decision in ComEd, 07-0566, in oral argument. Commonwealth Edison Co. v. Illinois Commerce Comm'n, 2-08-0959 (Cons.), Aug. 18, 2010, http://www.state.il.us/court/Media/Appellate/2nd_District.asp.

to mention the amount of that change itself – raises further doubt whether the change can be treated as a "known and measurable" adjustment to the test year. (Ameren Ex. 2.0RH, pp. 8-9; Ameren Ex. 11.0RH (Rev.) (Stafford Reb.), p. 14.) Rather, the Commission itself contends that the anticipated change in the reserve over the pro forma period is the very type of adjustment based solely on attrition that Part 287.40 specifically forbids. (See, e.g., ICC ComEd Br., pp. 11 ("[T]he existing Commission rule specifically forbids the use of a general attrition factor to base a pro forma adjustment. Yet that is all that GC Petitioners and IIEC are doing, moving the measurement of depreciation for the 2006 test year rate base to June 2008.").

No party has argued that Part 287.40 abolishes the principle of the 12 month test period mandated in Part 287.20. But the Order essentially pushes forward the entire balance of accumulated depreciation to February 2010, resulting in a deduction to rate base for depreciation on plant that will occur after the test year used to establish every other item of operating income and rate base. The Commission itself has argued before the Appellate Court that it is not permissible to ignore test year limitations and include additional depreciation to test year rate base simply because the utility opts to exercise its right to seek recognition of known and measurable plant investment. "Such a restatement of the depreciation on the historical test year rate base violates the concept of a historical test year." (ICC ComEd Br., p. 10.)

Staff claims that prior AIU orders are "consistent with the Commission conclusion in the Order" and that "where substantial pro forma plant adjustments were proposed by an AIU utility, the Commission found that the accumulated depreciation reserve for all embedded plant should likewise be rolled forward to the same pro forma period." (ICC Staff Ex. 1.0RH-R (Ebrey Dir.), pp. 9, 16.) But not one of the prior AIU orders relied on by Staff are on point. Indeed, Staff conceded on cross-examination that, out of the eight prior AIU cases it cites, six cases involved "limited pro forma capital additions," one case involved no pro forma capital additions whatsoever, and in the only case that included many projects, the treatment of accumulated depreciation was resolved by the parties through stipulation. (Reh. Tr. 156-57 (Ebrey).) Thus, the records in those prior AIU cases bear no similarity whatsoever to the record here.

More importantly, Staff ignores recent Commission orders that are on point. Staff acknowledges two cases in which the Commission did not roll forward accumulated depreciation despite the utility proposing substantial pro forma capital additions (ComEd, 05-0597 and North Shore/Peoples, 07-0241/0242). But Staff conceded that it had not reviewed the record of any prior orders in which a post-test year adjustment to accumulated depreciation was expressly contested by the utility and explicitly rejected by the Commission. (Id. at 158-163.) It would be arbitrary for the Commission here to abandon its prior interpretation in recent cases where the utility contested the adjustment to the reserve and the Commission has rejected the adjustment, even though the utility proposed substantial capital additions. It would be no less arbitrary for the Commission to ignore those decisions (as well as the Commission's position on appeal in the most recent decision on point) – as Staff has chosen to do – and base its decision here exclusively on outdated AIU orders with different facts where the adjustment was not contested.

C. *The Matching Principle Does Not Mandate A Roll Forward Of Test Year Accumulated Depreciation.*

The Order claims that "regulatory accounting requires the plant in service balance and the accumulated reserve for depreciation balance to be representative of the same point in time." Order, p. 30. The suggestion is that post-test year plant and post test-year accumulated depreciation are "opposing sides of a coin" that must match at any given point in time to avoid an "inflated rate base." Id., p. 31. The "matching principle" does not permit the Commission to "circumvent the existing [test year] rules." Business & Prof. People for the Public Interest v.

Illinois Commerce Comm'n, 146 Ill.2d 175, 240 (1991) ("BPI II"). But in actuality, it is the proposed post-test year adjustment to accumulated depreciation for embedded plant that creates the accounting mismatch, resulting in a rate base that artificially understates the utility's actual "net plant" at the time rates go into effect. The improper matching of the rolled-forward balance of accumulated depreciation to other items in operating income and rate base demonstrates that Staff and the Intervenors' proposed adjustment violates the very principles they claim to espouse.

From a regulatory accounting perspective, the matching principle prevents a utility from "overstating" its revenue requirement by mismatching low revenue data from one year with high expense data from a different year. (Ameren Ex. 3.0RH (Rev.), p. 5.) The test year rules are intended to prevent such a mismatch by requiring revenue and expenses to be stated over the same 12 month period. (Id.) But the "roll forward" of accumulated depreciation proposed here is not associated with any other adjustments to test year balances. (Ameren Ex. 11.0RH (Rev.), p. 11.) In other words, from a regulatory accounting perspective, the full "roll forward" of accumulated depreciation does not correspond to a full "roll forward" of any other components of the cost of service. Thus, there is a mismatch between the period used to set accumulated depreciation and the 12 month period used to set other items of operating income and rate base.

Staff claims that the matching principle requires a "roll forward" of test year accumulated depreciation, if a utility's pro forma adjustment includes a majority of projects anticipated to be in service during the pro forma period. (ICC Staff Ex. 1.0RH-R, p. 12.) But even if the roll forward of accumulated depreciation were a related adjustment to post-test year plant additions (and it is not), in this instance, the AIU's gross plant balance was not rolled forward. (Ameren Ex. 11.0RH (Rev.), pp. 15-16; Ameren Ex. 11.2RH.) Indeed, by moving the entire balances of accumulated depreciation and ADIT to February 2010, the rate base deductions for those items in the Order <u>more than offset</u> the increase to rate base from the pro forma additions, even though the AIU's net plant was increasing during the pro forma period. (Ameren Ex. 3.0RH (Rev.), p. 4; Ameren Ex. 11.0RH (Rev.), p. 21; Ameren Ex. 11.5RH.) It makes no sense for the AIU, with <u>increasing</u> plant investment, both before and during the pro forma period, to endure a <u>negative</u> adjustment to rate base because of a pro forma plant adjustment. The adjustment to roll forward accumulated depreciation simply does not provide the appropriate regulatory accounting match.

The Order concedes that Part 287.40 "as interpreted here, may allow for a situation where a utility's gross plant increase would be outpaced by its additional accumulated depreciation." Order, p. 31. The Order claims that "the rule should still only operate to increase rate base—the utility can choose to seek pro forma adjustments when increases in gross plant outpace depreciation, and elect not to seek them when they do not." <u>Id.</u> But the Order's application could lead – and in this case has led – to a decrease to rate base net plant, even if the utility demonstrates a trend of increasing actual net plant. Indeed, under the Order, a proposal to include only a few capital additions seemingly would require a roll forward of accumulated depreciation on all embedded plant and thus a significant deduction to rate base.

Staff, recognizing the Order's paradox, attempts to create a way out by manufacturing, for the first time on rehearing, a "limited projects" test whereby test year accumulated depreciation would not be rolled forward, if a utility proposed a pro forma adjustment to plant that included an amount of capital additions less than "substantial" from the projects anticipated to be in service during the pro forma period. (ICC Staff Exhibit 1.0RH-R, pp. 12-16.) Staff cannot explain under what facts the Commission should apply these "limited" and "substantial" projects tests. But apart from the subjectiveness and uncertainty of this approach, Staff's "limited projects" test simply creates yet another paradox: a utility will receive a larger increase to rate base by recognizing a handful, rather than the majority, of pro forma capital additions. Under Staff's approach, for example, if the AIU had proposed to include two specific projects in its pro forma for AmerenIP electric, they would have realized a net increase in rate base of approximately $5 million, in contrast to the negative rate base adjustment for AmerenIP under Staff's rehearing calculation. (Ameren Ex. 11.0RH (Rev.), p.11; Reh. Tr. 168-169 (Ebrey).) Staff's approach – whereby the utility would seemingly propose to recognize an amount of additions less than a "majority" – is no more workable or reasonable than the Order's approach to always roll forward accumulated reserve to the end of the pro forma period.

The Order further contends that "any adjustment recognizing only post-test year increases will overstate a utility's actual rate base and not be representative of the same point in time." Order, p. 30. But ratemaking is not limited to a determination of actual rate base at any fixed point in time. As the Proposed Order in the initial phase of this proceeding properly recognized,

> It is hardly surprising to the Commission that expenses, revenues, and plant in service begin to deviate from test year values even before a rate case is concluded. Similarly, the Commission does not expect that AIU's expenses, revenues, or plant in service for any future annual period to align with the values approved in this case. That does not, however, necessarily mean that the rates approved are not just and reasonable--rate making is simply imprecise.

(ALJPO, p. 33.) In other words, "the pro forma adjustment is not an accounting process for recording events as they occur." <u>Accounting For Public Utilities</u> § 7.08[2] (Matthew Bender, Oct. 2009 ed.).

The overall objective of ratemaking is to establish a revenue requirement that best approximates the utility's level of investment and cost of service during the period that rates will be in effect. The Order's adjustment to accumulated depreciation sets a rate base "net plant" that <u>understates</u> the AIU's actual "net plant" per books as of February 2010, months before initial rates from this proceeding were in effect. (Ameren Ex. 5.0RH (Getz Dir.); Ameren Ex. 14.0RH (Getz Reb.).) Likewise, if the Commission had accepted the same adjustment in ComEd, 07-0566, the utility's actual net plant would have significantly exceeded rate base net plant during the time rates would have been in effect. (Ameren Ex. 4.0RH (Dane Dir.); Ameren Ex. 13.0RH (Dane Reb.).) Nor did any party put forward any evidence that the AIU would have an "overstated" net plant in rate base over the period rates will be in effect, if no post-test year adjustment on embedded plant were made in this proceeding. Indeed, even Staff has conceded that rate base net plant balance is not "overstated," if it does not exceed "the anticipated actual net plant balance in February 2010 or during the time that rates from this case are expected to be in effect." (Staff Init. Br., p. 11 (emphasis added).) As Bender recognizes, "the assumption that failure to [generally restate the accumulated depreciation reserve] will produce excessive levels of investment assumes that the total plant investment will not increase but will remain at test year levels. This assumption is rarely valid." Accounting For Public Utilities § 7.08[2] (Matthew Bender, Oct. 2009 ed.). Thus, the "matching principle" does not mandate or justify a post-test year adjustment to accumulated depreciation.

D. *Section 9-211 Does Not Mandate A Roll Forward Of Test Year Accumulated Depreciation.*

Section 9-211 states, "The Commission, in any determination of rates or charges, shall include in a utility's rate base only the value of such investment which is both prudently incurred and used and useful in providing service to public utility customers." The Order claims that "Section 9-211 essentially requires the Commission to ensure that a utility's approved rate base does not exceed the investment value the utility actually uses to provide service." Order, p. 31. But the Commission itself has told the Appellate Court – correctly – that any reliance on Section

9-211 to support a roll forward of the test year depreciation is "unavailing." (ICC ComEd Brief, p. 10; see also ALJPO, p. 33 (Any "reliance on Section 9-211 is misplaced").)

Both the AIU and Staff agree that Section 9-211 does not define how to value rate base or otherwise mandate any particular accounting conventions, including the appropriate treatment of pro forma adjustments for plant additions. (Ameren Ex. 3.0RH (Rev.), p. 2; ICC Staff Ex. 1.0RH-R, p. 13.) As the Commission explained to the First District Court of Appeals, "220 ILCS 5/9-211 has not been interpreted to abolish the test year rules." (ICC ComEd Brief, p. 10.) Rather, Section 9-211 merely establishes a "prudence" test for including plant investment in rate base. Illinois Power Co. v. Illinois Commerce Comm'n (2003), 339 Ill. App. 3d 425, 437 ("Pursuant to Section 9-211 of the Act . . . the Commission could only include the costs of these projects in Illinois Power's rate base if it found that those costs were 'prudently incurred.'"). As Staff recognized, the question of what is the appropriate adjustment to test year accumulated depreciation "goes beyond the prudent and used and useful criteria discussed in Section 9-211." (Staff Ex. 1.0RH-R, p. 13.) The Order on Rehearing must "reject[] the suggestion that Section 9-211 has any bearing on this issue." (ALJPO, p. 33.)

III. If An Adjustment To Accumulated Depreciation Reserve Is Appropriate, What Methodology Should Be Employed In Making The Adjustment?

As discussed in Section II, *supra*, whenever a utility proposes a pro forma adjustment to account for known and measurable post-test year plant investment, the appropriate adjustment to test year accumulated depreciation is to recognize the depreciation expense associated with that post-test year plant. This is the appropriate adjustment, regardless of whether the utility proposes to include "limited" or "substantial" post-test year capital additions. This is also the adjustment agreed on by the AIU and Staff, and approved by the ALJPO, in the initial phase of this proceeding. No further adjustment to "roll forward" the test year balance of accumulated depreciation is justified simply because the utility proposes to include post-test year plant in its test year plant in service, “as if” the capital additions were placed in service during the test year.

As shown below, the various “roll forward” adjustments to test year accumulated depreciation advocated in this case have differed materially in both methodology and amount.

Initial Phase Proposals	Methodology	Post-Test Year ADR Increase	Post-Test Year ADIT Increase	Rev. Increase to Order
AIU, Staff and ALJPO	N/A	$0	$0	$35,500,000
IIEC Ameren Ex. 2.10RH	Expense applied to certain accounts	$192,199,000	$0	$13,000,000
AG/CUB Ameren Ex. 2.11RH	CapEx less New Business	$169,335,000	$0	$15,500,000
Order Appendix G Corrected	Expense/Balance Sheet	$235,347,000	$81,740,000	($1,500,000)[5]

Rehearing Phase Proposals	Methodology	Post-Test Year ADR Increase	Post-Test Year ADIT Increase	Rev. Increase to Order
AIU	N/A	$0	$0	$35,500,000
Staff Primary Ameren Ex. 11.2RH	Expense/Balance Sheet	$229,492,000	$16,658,000	$6,500,000
Staff Alternative Ameren Ex. 11.2RH[6]	Expense/Balance Sheet	$207,001,000	$16,658,000	$9,500,000
IIEC IIEC Ex. 10.0RH Page 9, Table 1	Expense	$229,491,000	$0	$8,500,000
AG/CUB Ameren Ex. 11.3RH	CapEx less New Business	$124,976,000	$25,771,000	$18,000,000

Staff claims that “the assumptions each of the parties used in their calculations explain why the resulting amounts are different. If all parties had agreed on the basis for the adjustment, the amounts derived would be the same.” (ICC Staff Ex. 1.0RH-R, p. 18.) Staff makes this

[5] As discussed above, the technical sign change correction reduces the Order’s revenue requirement by approximately $1.5 million. See, supra, p. 1, n.1.

[6] Under Staff’s Alternative proposal, the ADR adjustment has been reduced to remove negative amounts for CIPS-E and IP-E shown on ICC Staff Ex. 1.0RH Attachment B – Revised line 11.

claim, despite recognizing – and rejecting – the radically different methodologies and adjustment amounts proposed by IIEC and AG/CUB in the initial phase of this proceeding. (Id., pp. 18-20.) Moreover, Staff makes this claim, despite now advocating a subjective "limited projects" standard when a post-test year adjustment to accumulated depreciation is not appropriate – a standard never expressly adopted by the Commission, never advocated by IIEC or AG/CUB in this or any other rate case, and implicitly rejected by the Order's holding that increases to accumulated depreciation during the pro forma period must always be recognized regardless of the amount of post-test plant additions that the utility proposes to include in test year plant. Thus, even on rehearing, the parties still cannot agree on when the adjustment should be made, much less the appropriate methodology and amount for the adjustment.[7]

More importantly, the various post-test year adjustments to the accumulated depreciation reserve (and the assorted methods of calculating the adjustment) proposed in this proceeding do not result in either a fair and balanced approach to the treatment of accumulated depreciation or a just and reasonable rate base. A utility should not be penalized with a deduction to rate base simply because it proposed a pro forma adjustment to recognize post-test year plant investment, when that utility has shown a trend of increasing net plant investment both before and during the pro forma period. Nor should a utility recognize a larger increase to rate base simply because it

[7] The AIU have set forth what would be necessary corrections to several of the proposed post-test year adjustments to accumulated depreciation, if the adjustment were in fact permissible and appropriate (and it is not).

Rehearing Phase Proposals	**Methodology**	**Post-Test Year ADR Increase**	**Post-Test Year ADIT Increase**	**Rev. Increase to Order**
IIEC Corrected Ameren Ex. 7.2RH	Expense applied to certain accounts	$156,702,000	$0	$17,000,000
Order Corrected Ameren Ex. 7.2RH	Expense/Balance Sheet	$156,702,000	$16,659,000	$15,000,000
Staff Corrected Ameren Ex. 11.2RH	Expense/Balance Sheet	$152,091,000	$11,663,000	$16,500,000

proposed to include "limited" instead of "substantial" capital additions. Neither the methodology approved in the Order nor Staff's hybrid – and largely undefined – "substantial" additions test produces a logical result. And both approaches essentially eliminate the benefit of mitigating regulatory lag in an environment of increased capital investment in a utility's distribution infrastructure. Indeed, both approaches serve only to exacerbate the effect of regulatory lag, even though it can be reasonably assumed that the utility will continue to invest in its systems throughout the time that rates will be in effect. Thus, the AIU's proposed adjustment (and methodology) must be accepted as the only just and reasonable approach, as this Commission previously and repeatedly has recognized in prior rate cases.

IV. To The Extent That The Commission Wants To Alter The Manner That It Adjusts Accumulated Depreciation Reserve, What, If Any, Steps Must Be Taken Before Doing So?

Despite the Commission having previously determined that Part 287.40 *prohibits* a roll forward of accumulated depreciation, the Order reverses course and finds that Part 287.40 *requires* this adjustment. As discussed by Dr. McDermott, the Commission has various tools at its disposal to consider changes to its rules. Changing a rule – or abandoning a prior interpretation of a rule – in the course of contested rate case, without prior notice to parties, is not one of them. If the Commission wants to alter the manner it adjusts accumulated depreciation under Part 287.40, the Commission *must* follow the statutory procedures for a rulemaking.

As discussed below, the Commission cannot arbitrarily abandon prior interpretations of its own procedural rules in the middle of a contested rate case without warning. If the Commission wants to alter the manner in which it consistently has interpreted and applied Part 287.40 with respect to adjustments to accumulated depreciation, then it must do so in a rulemaking proceeding outside the rate case process – or at least clearly indicate at the beginning of a contested case proceeding that it intends to change its policies, practices or rules concerning this adjustment for all utilities, as required by Section 220 ILCS 5/10-101. Here, however, the Commission did not take the necessary steps in this instance to alter the manner in which it adjusts the accumulated depreciation reserve under Part 287.40. Consequently, the adjustments to roll forward the balances of accumulated depreciation and ADIT must be reversed.

Administrative proceedings are governed by the fundamental principle of due process of law. Robert N. Nilles, Inc. v. Pollution Control Bd. (1974), 17 Ill. App. 3d 890, 894. While an administrative body has broad discretionary powers, it must exercise these powers judiciously and not arbitrarily. (Id.) In reaching a decision, agencies such as the Commission are required to follow their own rules in reaching a decision. Business & Professional People for the Public Interest v. Illinois Commerce Comm'n (1989), 136 Ill. 2d 192, 228 ("BPI I") ("the Commission cannot violate the Act or its own rules"); Hetzer v. State Police Merit Bd. (1977), 49 Ill. App. 3d 1045, 1047 ("[having] once established rules pursuant to statutory authority, an administrative agency is bound by these rules and may not violate them").

But agencies are bound not just by their rules, but also by their prior custom and practice in interpreting those rules, especially where, as here, there was detrimental reliance on those interpretations. United Cities Gas Co. v. Illinois Commerce Comm'n (1992), 225 Ill. App. 3d 771, 782; Alton Packaging Corp. v. Pollution Control Bd. (1986), 146 Ill. App. 3d 1090, 1093-94. Regardless of the precedential value Commission orders might have, the Commission may not arbitrarily abandon prior interpretations of its rules. Citizens Utility Board v. Illinois Commerce Comm'n, 166 Ill. 2d 111, 132 (1995) (Commission is unauthorized to depart drastically from practices established in earlier orders). Nor does Commission's discretion to decide each case on the individual merits give it the authority to interpret its administrative rules differently when confronted with analogous facts. (Ameren Ex. 6.0RH (McDermott Dir.), p. 5;

Ameren Ex. 15.0RH (McDermott Reb.), p. 5); Commonwealth Edison Co. v. Illinois Commerce Comm'n, 536 N.E.2d 724, 730 (Ill. App. 1989) ("the Commission may not depart, *sub silentio*, from its usual rules of decision to reach a different, unexplained result in a single case").

In Citizens Utility Board v. Illinois Commerce Comm'n, 166 Ill.2d 111 (1995), the Illinois Supreme Court reviewed a rulemaking order that effectively denied utilities the opportunity for full recovery of coal tar remediation costs. In three prior orders, the Commission specifically rejected proposals that would deny carrying charges on the unrecovered balance of coal tar remediation costs. Id. at 132. In the rulemaking proceeding, however, the Commission adopted the very proposal it had previously rejected. In overturning this portion of the order, the court found that "the Commission has failed to articulate a reasoned basis for its sudden departure from the [prior] orders." Id. The court specifically rejected arguments that "equity principles" or "public policy" justified the Commission's attempted departure from past practice. Id. at 126, 130. "In the absence of evidence to support a significant change in treatment of operating expenses, we do not believe that deference is owed to the Commission's policy decision regarding treatment of coal-tar cleanup expenses." Id. at 132; see also Illinois Power Co. v. Illinois Commerce Comm'n, 339 Ill. App. 3d 425, 439 (5th Dist. 2003) (reversing Commission order due to unwarranted change in policy concerning prudence review).

The Commission repeatedly has interpreted Part 287.40 as prohibiting adjustments to rate base to account for post-test year depreciation on embedded plant. ComEd, Docket 07-0566 (Order, Sept. 10, 2008); North Shore/Peoples, Docket 07-0241/0242 (Order, Feb. 5, 2008); ComEd, Docket 05-0597 (Order, July 26, 2006); ComEd, Docket 01-0423 (Order, Mar. 28, 2003). As the AIU discussed at length in prior briefs, in each case the Commission found that the proposed adjustment violates test year principles. Indeed, the Commission recently affirmed that interpretation in its defense of the ComEd 07-0566 Order on appeal:

> GC Petitioners and IIEC are wrong in claiming that there is a quid pro quo rule, i.e., that when a public utility receives a proper *pro forma* capital addition decision under 83 Ill. Adm. Code 287.40, the utility's rate base (or the depreciation on the embedded test year plant) is restated to the last date of the recognized pro forma capital addition. . . . GC Petitioners and IIEC ignore the fundamental fact that what they are proposing is contrary to Illinois law, the Commission's rules, and previous Commission decisions.

(ICC ComEd Br., p. 12; see also Brief of the Illinois Commerce Commission, People of the State of Illinois v. Illinois Commerce Comm'n, Docket Nos. 01-08-2055 et al., Apr. 10, 2009 ("ICC North Shore/Peoples Br."), pp. 22-29.)[8] "[S]uch a consistent and long-standing administrative interpretation cannot but have persuasive effect." Mississippi River Fuel Corp. v. Illinois Commerce Comm'n, 1 Ill.2d 509, 514 (1953).

Whether the Commission thinks that a post-test year adjustment to accumulated depreciation is now justified by "regulatory accounting" or hindsight of other utilities' rate orders is irrelevant. A misperception that Part 287.40 has led to undesirable results does not justify an arbitrary reinterpretation of the rule. At the initial hearing, IIEC's witness agreed that his proposed depreciation reserve adjustment is functionally the same as the adjustment that this same witness proposed in ComEd, Docket 07-0566. (Tr. 545.) The Order in Docket 07-0566 rejected the adjustment, citing all of the prior decisions where the Commission rejected the same adjustment. In the subsequent appeal of that Order, the Commission argued that Part 287.40 prohibits the adjustment. (ICC ComEd Br., pp. 8-15.) The Commission made the same representation in the appeal of the Order in North Shore/Peoples, which involved the same

[8] The Commission's appellate brief for North Shore/Peoples, Docket 07-0241/0242, was attached as Appendix B to the AIU's Post-Hearing Reply Brief in this initial phase of this proceeding.

adjustment. (ICC North Shore/Peoples Br., pp. 22-29.) The Commission has acknowledged that in light of its prior decisions on this issue, "to have adopted the [IIEC] position on this issue at this late date would be merely arbitrary as the Commission itself found." (ICC ComEd Br., p. 13; see also ICC North Shore/Peoples Br., p. 27.) "[N]o matter how much discretion the Commission is afforded under the Act, its decisions are entitled to less deference when it drastically departs from past practice." BPI I, 136 Ill.2d at 228.

In BPI I, the Court explained, "The Commission may alter or amend its past practice, but it must follow the procedures set forth in its rules and the Act." Id. at 226. The Court held that the Commission erred in attempting to change its policy regarding test year rules without following Section 10-101 of the Act, which requires that "[a]ny proceeding intended to lead to the establishment of policies, practices, rules or programs applicable to more than one utility may . . . be conducted pursuant to . . . contested case provisions, provided such choice is clearly indicated at the beginning of such proceeding and subsequently adhered to." Id., quoting § 220 ILSC5/10-101. Rather than add a new rule or amend an existing rule to establish a new test year period, the Commission improperly used its discretion to consider circumstances outside the test year in deciding particular issues. Id.; see also BPI II, 146 Ill.2d at 241-242 (1991) (finding that the Commission committed reversible error by violating its own rules by attempting to circumvent existing rules instead of amending its test year rules).

Here, the Commission violated Section 10-101 by revisiting its policies, practices and rules concerning post-test year adjustments to the accumulated depreciation reserve and ADIT in the middle of a contested proceeding, rather than a rulemaking, without affording proper notice to the AIU and all other interested parties. Section 10-101 explicitly provides, "Any proceeding intended to lead to the establishment of policies, practices, rules or programs applicable to more than one utility may, in the Commission's discretion, be conducted pursuant to either a rulemaking or contested case provisions, provided such choice is clearly indicated at the beginning of such proceeding and subsequently adhered to." (emphasis added). In the wake of four prior decisions where the post-test year adjustment to the reserve was contested by the utility and rejected by the Commission, it was not appropriate for the Commission to abandon that interpretation in a Final Order at the end of a subsequent rate case for another utility with analogous facts. As the Commission itself recognized, just weeks after the AIU filed its direct case in this proceeding, "in the absence of a rule change, the Commission is not authorized to create such a selective two and a half year test year rule for depreciation on the historical rate base." (ICC ComEd Br., p. 12.) Before it could alter its prior practice, the Commission had to initiate a proceeding for that purpose and provide clear notice to all interested parties at the outset of the proceeding that the Commission intended to revisit its prior interpretation of Part 287.40 and application of post-test year adjustments to accumulated depreciation. No such proceeding was ever initiated. And no such notice was ever given.

As former Commissioner Dr. McDermott explained, "a rate case is simply not the place to have such a detailed and important policy discussion regarding [the proper interpretation and proper application of Part 287], given the limited time, resources, and input." (Ameren Ex. 6.0RH, p. 4.) Rather, issues of rule interpretation or intent should take place within a rulemaking proceeding or other more general framework. (Id., p. 5.) This allows a full vetting of the issues to take place in which all interested parties may participate where a policy or practice can be established for future Commissions and the type of regulatory uncertainty that is caused by Commission decision vacillating on a case-by-case basis can be avoided. (Id., p. 6.) Rules are made and policies established to give certainty to and settle expectations for parties concerning on how they will be treated by the controlling regulatory authority. Drastic reversals in Commission policy and practice must be communicated to interested parties before the fact, not after, to ensure the fairness, predictability and stability of the regulatory environment. (Id., p. 8.) While one can claim that the Commission prior decisions were all fact-based, the Commission cannot interpret and apply Part 287.40 differently in this proceeding than in prior cases where the utility proposed a similar adjustment to include significant post-test year plant additions to its test year plant in service without rolling forward the test year balance for accumulated depreciation. The adjustments to roll forward the balances of accumulated depreciation and ADIT in the Order must be reversed, and any reconsideration of the interpretation and application of Part 287.40 must occur outside the context of this rate case proceeding.

V. What Is The Appropriate Adjustment, If Any, To Accumulated Depreciation Reserve In This Proceeding (Including Any Of The Alleged "Technical Corrections")?

As discussed above in Sections II and III, *supra*, the appropriate adjustment to the test year balance of accumulated depreciation in this proceeding is to recognize the depreciation expense related to the post-test year plant additions. Any further adjustment to "roll forward" the test year balance of accumulated depreciation to the end of the pro forma period, including any post-test year adjustment that includes the technical corrections proposed by the AIU in the Application for Rehearing, is not appropriate. The Order's post-test year adjustment to the test year balance of accumulated depreciation should be removed in the Order on Rehearing, as reflected in Ameren Rehearing Appendices A-F, Schedule 2, Page 2, column d.

A. *What Is The Appropriate Valuation Of Net Plant At The End Of February 2010?*

The Commission's stated purpose in "rolling forward" the balances of accumulated depreciation and ADIT was to fashion a "net plant" that provides "an accurate and balanced snapshot of the utility's financial picture for ratemaking purposes." Order, p. 31. The Order further claimed that failure to roll forward the accumulated depreciation reserve "will overstate a utility's actual rate base and not be representative of the period rates are in effect." Id., p. 30. But rather than provide an "accurate and balanced snapshot" or an "appropriate valuation" of the AIU's "net plant" as of the end of the pro forma period, the Order's rate base net plant materially understates the AIU's actual "net plant" balances on their books at the end of February 2010 – two months before rates from this proceeding were even in effect. (Ameren Ex. 2.7RH; Ameren Ex. 5.0RH (Getz Dir.); Ameren Ex. 14.0RH (Getz Reb.).)

The Order fails to paint an "accurate" and "appropriate" picture of "net plant" as of the end of February 2010 in part because the AIU's proposed pro forma plant addition adjustment ($278 million) to rate base does not include all of the capital additions placed in service during the pro forma period ($380 million). (See Ameren Ex. 14.1RH.) The fact that the AIU's pro forma adjustment to plant in service accounts for only approximately 73 percent of the distribution plant placed in service during the period indicates that the AIU did not actually "roll forward" its entire gross plant balance. By purporting to "match" the Order's plant in service with only the pro forma additions (instead of all capital additions) with estimated balances for accumulated depreciation and ADIT as of February 28, 2010, the Order does not and cannot capture the full value of the plant investment actually placed in service during the pro forma period. Staff contends its proposed adjustments to accumulated depreciation and ADIT result in an "appropriate valuation" of the AIU's "net plant" at the end of February "for rate making purposes." (Ameren Ex. 14.0RH, pp. 5-6; Ameren Ex. 14.4RH.) But Staff's "net plant" balance still understates the actual balance of the AIU's net plant by approximately $133 million. (Ameren Ex. 14.0RH, p. 6; Ameren Ex. 14.3RH.)

Neither the Order's nor Staff's "net plant" is an "accurate and balanced snapshot" of the AIU's financial picture in the period when rates decided in this proceeding are in effect. It is not even an accurate snapshot of the AIU's financial picture at the end of the pro forma period. If the point of the Order's adjustment was to establish an "appropriate valuation" of "net plant" at the end of the pro forma period that comes close to resembling the actual "net plant" balances on the utility's books, the Order's "rolling forward" adjustment fails to meet that end.

VI. Is An Adjustment To Accumulated Deferred Income Taxes ("ADIT") Appropriate When The Reserve For Accumulated Depreciation Is Adjusted?

As explained in Sections II, III and V, *supra*, whenever a utility proposes a pro forma adjustment to recognize post-test year plant investment, the appropriate adjustment to the test year balance of accumulated depreciation is to recognize the depreciation expense related to those post-test year capital additions. This is also the appropriate adjustment to ADIT, i.e., to recognize only the change in ADIT related to the pro forma plant additions, regardless of whether the utility proposes to include limited or substantial post-test year capital additions. (Ameren Ex. 2.0RH, p. 15; Ameren Ex. 3.0RH (Rev.), p. 15.) This is also the adjustment agreed on by the AIU and Staff, and approved by the ALJPO, in the initial phase of this proceeding. No further adjustment to "roll forward" the test year balance of ADIT is justified because the utility has proposed to include post-test year plant additions in its test year plant in service, "as if" the plant additions were placed in service during the test year. Indeed, no party previously proposed a post-test year adjustment to ADIT in the initial phase of this proceeding. And the Commission expressly rejected proposed adjustments to roll forward test year ADIT in connection with pro forma plant additions in ComEd, 07-0566. See Order, Sept. 10, 2008, p. 32 ("Consistent with the Commission's analysis concerning accumulated provisions for depreciation and amortization, the Commission rejects the AG, CG, and IIEC proposed adjustments to ADIT.").

Even if it were permissible under Commission rules and accounting principles to roll forward the balance of accumulated depreciation, however, it is still not appropriate to make an additional adjustment to roll forward the test year balance of ADIT. ADIT is an adjustment made when computing rate base, not "net plant." (Ameren Ex. 2.0RH, p. 15; Ameren Ex. 3.0RH (Rev.), p. 16.) If the Order intends to restate the AIU's "net plant," then there should be no adjustment for ADIT, since ADIT is not part of the "net plant" calculation. If the intent of the Order was to restate rate base as of February 2010, then an adjustment to restate ADIT arguably would be appropriate, provided that all other components of rate base were similarly restated to February 2010 balances. In addition, the operating statement also would have to be updated for the 12 month period ending February 28, 2010, so that revenue and expense are matched to the same period. However, as explained above, a pro forma adjustment to recognize post-test year plant investment does not transform the utility's historical test year to a current test year. Thus, no additional adjustment to ADIT is appropriate other than the adjustment related to the pro forma plant additions accepted by AIU, Staff and ALJPO in the initial phase of this proceeding.

A. *If So, What Is The Appropriate Calculation Of The Adjustment To ADIT As Of The End Of The Pro Forma Period In This Proceeding?*

For the reasons stated above, the appropriate adjustment to the test year balance of ADIT is to account for the increases in ADIT related to the pro forma plant additions. The Order's post-test year adjustment to the test year balance of ADIT should be removed in the Order on Rehearing, as reflected in Ameren Rehearing Appendices A-F, Schedule 2, Page 2, column d.

VII. With Regard To Cash Working Capital, What Is The Appropriate Methodology To Determine The Accuracy Of The $3.75 Million In Capital Costs That AIU Argues Should Be Netted Against $9.4 million Of Late Fee Revenues?

The AIU have customers who pay late, and there is a cost to the AIU associated with these late payments. When a customer pays late, the AIU do not receive timely the revenues from that customer to provide service and must obtain the equivalent funds necessary for working capital (i.e., CWC) from some other source. The AIU, however, continue to pay their employees and vendors for services received in a timely manner. Therefore, the costs related to late payments represent a cost to the AIU associated with having to fund necessary services (i.e., through CWC) when payments are not made on time.

The effect of late payments is included as part of the CWC calculation through the collection lag component. As explained by AIU witness Stafford, the $3.75[9] million in costs associated with late payments represents the difference in the revenue requirement between a calculation of CWC using the 28.13 day collection lag calculated in the AIU's lead lag study and one using the 21 day collection lag espoused by IIEC and adopted in the Order.

In accordance with the Commission's rules, the AIU also receive late payment fee revenues from late paying customers (totaling $9.4 million in the test year). These revenues are accounted for in the revenue requirement, and serve to reduce the level of tariffed rates to the benefit of ratepayers. It is therefore appropriate to include the full cost associated with late paying customers (through the collection lag component of CWC) in the revenue requirement as well. No witness on rehearing disputes the mathematical calculation of the $3.75 million in capital costs or the $9.4 million in late payment fee revenues. Nor does any witness dispute the fact that both late payment fee revenue and CWC cost are properly included in determination of the revenue requirement. Staff agrees that both the $3.75 million of CWC costs arising from the calculated 28.13 day collection lag and the test year level of late payment revenue of $9.4 million should be reflected in the revenue requirement. On rehearing, the only alternative offered to the 28.13 day collection lag was the IIEC's proposal to use 21 days. As discussed below, however,

[9] This amount is corrected from $3.9 million. (See Ameren Ex. 2.0RH, p. 17; 2.8RH.)

IIEC's proposal amounts to nothing more than an arbitrary and unsupported proxy for a collection lag. The AIU, by contrast, have prepared a conservatively calculated collection lag based on test year data. Thus, the AIU's proposal regarding CWC on rehearing should be adopted, and the $3.75 million of CWC costs arising from the calculated 28.13 day collection lag should be reflected in the revenue requirement.

The appropriate methodology to determine the accuracy of the $3.75 million in capital costs requires using a collection lag of 28.13 days. As Mr. Heintz explained, CWC refers to the amount of funds required to finance the day-to-day operations of the AIU. (Ameren Ex. 9.0RH, p. 3.) As such, it represents an investment on the part of the utility and is therefore included in rate base, in order to compensate the utilities' investors for providing the funds required for those day-to-day business operations requiring a cash outlay during the lag time between the provision of service and the receipt of revenues associated with that service. (Id.) In Illinois, the CWC calculation is often based on a lead-lag study, 83 Ill. Adm. Code 285.2070, and the AIU submitted such a study in the present case to support its requested level of CWC. (Id.)

One component considered in determining the AIU's CWC requirements is the revenue lag. The revenue lag consists of five distinct components: (1) meter reading or service lag; (2) billing lag; (3) collection lag; (4) payment processing lag, and (5) bank float on collection from customers. The collection lag was the only contested component of CWC in this proceeding. (Id., p. 4.) The AIU's 28.13 day collection lag was determined in the same manner as the other components of the lead-lag study: it was based on actual test year data. The collection lag reflects the number of days between when the AIU issue a bill and when the AIU receive payment, which necessarily includes payments received after the due date. (Id.)

The collection lag during the test-year period is based on empirical data obtained from receivables reports generated by the AIU's customer billing system. (Id., p. 6.) The collection lag was based upon an analysis of the AIU's actual accounts receivables for the test year. Weekly reports were produced for the AIU that show the aging of accounts receivables, by time outstanding, for residential and non-residential customers. (Ameren Exs. 9.1RH; 9.2RH.) The receivables totals for the test year were calculated and weighted for each of the receivables aging buckets (e.g., 30-60 days) as a percent of the total accounts receivables. The midpoint of each aged bucket was determined and multiplied by the weighted average of the dollars in the aged bucket during the test year. The sum of weighted averages produced the 28.13 day collection lag. (Ameren Ex. 9.0RH, p. 8; Ameren Ex. 9.3RH.)

On rehearing, Mr. Heintz reviewed the calculations supporting the collection lag. (Ameren Ex. 9.0RH, p. 9). Mr. Heintz's review revealed that the ranges for the aged buckets originally relied upon were incorrectly defined. (Id.) He recalculated the collection lag based upon the corrected definitions of each of the aged buckets, which revealed that the collection lag was actually 35.11 days. (Ameren Ex. 9.4RH.) Moreover, the 90+ days aging bucket of receivables was treated as if the receivables were outstanding for only 90 days, when they could be more. If these receivables had been fully aged (i.e., to beyond 90 days), the collection lag would have been greater than 28.13 days. (Ameren Ex. 9.0RH, p. 10.) Thus, a corrected collection lag would result in a higher CWC requirement for the AIU. Nonetheless, the AIU propose only to use the original 28.13 day collection lag. The updated data, however, clearly demonstrate that the AIU have employed a conservative collection lag in the determination of their CWC requirements. (Id.)

The difference in the amount of CWC required using a collection lag of 28.13 days, as calculated by the AIU using test year data, versus 21 days (adopted in the Order), is $32.976 million, as shown on Ameren Exhibit 2.8RH. (Ameren Ex. 2.0RH, p. 18.) The $3.75 million in "capital costs" represents the revenue requirement impact to the AIU associated with this difference in CWC allowance. (Id.)

In addressing this issue, IIEC witness Mr. Meyer contends that 28.13 days is not the correct collection lag. His "analysis," however, is flawed. Mr. Meyer acknowledges that "a properly determined collection lag is a dollar-weighted average of customers' payment performance." (Ameren Ex. 16.1RH, p. 3, Data Response AIU-IIEC 11.05.) Mr. Meyer asserts that the IIEC's proposed collection lag of 21 days represents an "average" of customers' payment performance. (IIEC Ex. 11.0RH, p. 7.) Mr. Meyer admits, however, that his 21 day collection lag "was *not* based on a calculation of average customer payment performance," (Ameren Ex. 16.1RH, p. 5, Data Response AIU-IIEC 11.16 (emphasis added)), and is instead merely the number of days allowed by 83 Ill. Administrative Code 280.90(a) before which the utilities in Illinois cannot charge a late fee. (Ameren Ex. 16.1RH, p. 4, Data Response AIU-IIEC 11.14.) As such, it is a purely hypothetical number. The 21 day period proposed by the IIEC is not an average of any payment data, nor does it reflect any real or measured customer payment pattern. IIEC has provided no study, analysis, actual data, or other empirical evidence that supports the conclusion that the 21 day period is representative of the AIU collection patterns. Further, Mr. Meyer did not perform a quantitative analysis in an effort to validate his assumption that the 21 day lag proposed by the IIEC represents an average of the AIU's customer payment performance. (Ameren Ex. 16.1RH, p. 6, Data Response AIU-IIEC 11.18.) Mr. Meyer simply assumed that the 21 days is an appropriate proxy for the AIU actual collection lag, without providing any supporting evidence. (Ameren Ex. 16.0RH, p. 8.) On rehearing, Mr. Meyer does not dispute Mr. Heintz's analysis which demonstrated the calculation of AIU's 28.13 day collection lag. (Id., p. 9.)

In addition, Mr. Meyer's proposed collection lag is substantially lower than recent collection lags of other Illinois utilities. (Id., p. 8.) The approved collection lag for Nicor, Docket 08-0363, was 33.77 days. Peoples Gas Light and Coke Company and North Shore Gas Company, Docket No. 09-0166/09-0167 (cons.), filed for a collection lag of 32.72 days. (Id.) And ComEd recently filed for a collection lag of 39.16 days (Docket No. 10-0467). (Id., p. 9.)

For these reasons, the AIU's 28.13 day collection lag, calculated using test year data, is reasonable, and the $3.75 million in costs associated with the difference between 28.13 days and 21 days should be included in the AIU's revenue requirement.

A. *What Is The Appropriate Methodology To Determine Whether The $3.75 Million In Capital Costs Should Be Netted Against The $9.4 million Of Late Fee Revenues To Offset The Revenues With The Capital Costs?*

Actual AIU aging of accounts receivables data clearly shows that not all customers pay their bills on time (as does the fact that the AIU receive late payment fee revenues). (Ameren Ex. 9.0RH, p. 11.) Such late payments are governed by the Commission's rules, at 82 Ill. Adm. Code Part 280, which contain extensive rules regarding the payment terms and conditions. (Ameren Ex. 2.0RH, p. 17.) In particular, the Part 280 rules (83 Ill. Adm. Code Section 280.90) set the amount of a late fee that a utility may charge. The AIU received $9.4 million in late payment fee revenue in the test year. (Ameren Ex. 2.0RH, p. 18.)

By reducing the revenue requirement to be recovered from ratepayers through tariffed rates, late payment fees provide customers a clear benefit. (Ameren Ex. 9.0RH, p. 12.) IIEC agrees that late fee revenues are a source of revenue included in the cost of service and that tariffed rates established in these proceedings would be higher absent the late fee revenues.

(Ameren Ex. 16.1RH, p. 1, Data Response AIU-IIEC 11.09.) By adopting IIEC's proposed 21 day collection lag, however, the Order created an imbalance by reflecting the entire amount of late fee revenues (to the benefit of the AIU customers) but not reflecting the costs associated with the actual collection lag experienced during the test year. The same customer payment pattern that creates the actual collection lag also generates the late fee revenues. The Order did not fully reflect the costs of these payment patterns, but gave customers all of the benefits. Reflecting the actual late fee revenues in the determination of the AIU revenue requirement, while substituting an artificial collection lag of 21 days as proposed by IIEC, penalizes shareholders by providing a benefit to customers for which they are not entitled. (Ameren Exs. 16.0RH, p. 4-6; 2.0RH, p. 20.) The Commission should instead include the effect of actual test year late payments – both late payment revenue and the effect of the actual collection lag on CWC (worth $3.75 million at the Commission's approved returns) – in the revenue requirement. This proposal would give customers a net benefit of over $5.5 million (the excess of late payment charges over the CWC effect of late payments). (Ameren Ex. 9.0RH, p. 13.)

IIEC witness Mr. Meyer claims that there is no "direct connection" between the CWC cost arising from the collection lag and late payment fee revenues. (IIEC Ex. 11.0RH, p. 7.) However, both the CWC cost (a function of the collection lag) and the late fee revenues result from the AIU's customer payment patterns. (Ameren Ex. 16.0RH, p. 7.) While Mr. Meyer proposes a reduction of the collection lag to 21 days, he does not propose a reduction in late fee revenues to reflect a 21 day collection lag payment pattern. (Ameren Ex. 16.0RH, p. 7.) In fact, Mr. Meyer also admitted that he has not performed an analysis of what late fee revenues would be with a 21 day collection lag. (Ameren Ex. 16.1RH, p. 2, Data Response AIU-IIEC 11.09.)

Staff agrees that both the $3.75 million of CWC costs arising from the calculated 28.13 day collection lag and the test year level of late payment revenue of $9.4 million should be reflected in the revenue requirement. (Ameren Ex. 16.0RH, p. 3.) Staff witness Theresa Ebrey stated:

> The costs and revenues related to late payments should be both included in or both excluded from the revenue requirement. This is consistent with the matching principle wherein costs for a period should be matched with revenues for the same period. Since the revenues associated with late payment fees decrease the amount of revenues to be recovered through base rates, the costs associated with the collection lag should also be reflected in the revenue requirement.

(ICC Staff Ex. 1.0RH-R, p. 27.) Ms. Ebrey adjusted the revenue lag to include the 28.13 collection lag, rather than the 21 day collection lag. (ICC Staff Ex. 1.0RH-R, p. 27.)

In conclusion, IIEC's position on rehearing should be rejected, and, consistent with Staff's recommendation, the $3.75 million of CWC costs arising from the calculated 28.13 day collection lag should be reflected in the revenue requirement.

VIII. What, If Any, Adjustment Is Legally Appropriate With Regard To Pension And Other Post-employment Benefits?

In the initial phase of this proceeding, the AIU proposed an adjustment to test year pension and benefits expense that was "individually identified and supported" in direct testimony and "known and measurable" based on a July 2009 actuarial valuation; the most current actuarial data available at the time. The AIU proposed adjustment is no different in character from adjustments proposed by Staff or accepted by the Commission in many prior cases. "Unless there are clear and distinguishable reasons for deciding a case different, the Commission will follow in line with precedent. To do otherwise risks a charge of arbitrary and capricious action." North Shore/Peoples, Dockets 07-0241/0242, Order, p. 16; see also BPI I, 136 Ill.2d 192, 228 (1989) ("[N]o matter how much discretion the Commission is afforded under the Act, its decisions are entitled to less deference when it drastically departs from past practice.") The Order's rejection of the AIU adjustment is a sharp departure from past Commission practice that must be corrected in the Order on Rehearing. The AIU proposed adjustment to pension and benefits expense is "legally appropriate" and should be approved.

A. *The AIU's Pro Forma Adjustment To Pension And Benefits Expense Was Individually Identified And Supported In The AIU's Direct Case*.

The Order suggests that the AIU's proposed pro forma adjustment was not "individually identified and supported" in direct testimony, as required by Part 287.40. Order, p. 90. The Order is mistaken. The AIU identified with specificity a pro forma adjustment to pension and benefits expense in their direct case and provided the underlying support for this adjustment months before the initial evidentiary hearing in this proceeding. That the AIU lowered their adjustment during the course of this case does not violate Part 287.40.

From the outset of this case, the AIU put interested parties on notice that they were seeking to adjust test year pension and OPEB expense based on post-test year expense as calculated by the AIU's independent actuary. The AIU direct testimony proposed a pro forma adjustment to pension and OPEB expense based on budgeted 2010 expense, as calculated by the AIU's actuary in a January 2009 actuarial report. (Ameren Ex. 2.0E Rev. (Stafford Dir.), p. 8.) Six weeks later, the AIU filed supplemental direct testimony that *lowered* the pro forma adjustment based on an updated actuarial analysis prepared in July 2009. (Ameren Ex. 25.0 (Stafford Supp. Dir.), p. 4.) During the next two months, Staff reviewed the AIU's proposed adjustment and the January *and* July 2009 actuarial reports. Staff, however, rejected the adjustment, claiming that changes in the 2010 estimates and 2009 actual expense amounts between the January and July actuarial reports indicated that the adjustment did not "meet the known and measurable criteria for pro forma adjustments because the amounts of the changes are not determinable." (ICC Staff Ex. 1.0 (Ebrey Dir.), p. 26.)

In rebuttal testimony, the AIU explained why the July 2009 actuarial valuation presented a known and measurable level of pension and benefits expense for 2010. (Ameren Ex. 38.0-38.2 (Lynn Reb.).) *Relying on the same July 2009 valuation*, the AIU also proposed an alternative calculation of the adjustment based on actuarially-determined expense for the 12 months ending September 30, 2009. (Ameren Ex. 29.0 Rev. (Stafford Reb.), p. 12.) On rebuttal, Staff rejected both proposals, claiming that only a final actuarial report for the calendar year 2009 was sufficient to demonstrate a known and measurable level of expense for that year. (ICC Staff Ex. 15.0 (Ebrey Reb.), p. 19.) Not once, in either direct or rebuttal testimony, did Staff ever claim that the AIU's pro forma adjustment was untimely or that Staff was prejudiced by having inadequate time to respond and review the AIU's proposal.

There is no dispute that the AIU proposed a pro forma adjustment to pension and benefits expense in their direct case. Contrary to the implication in the Order, Part 287.40 does not preclude a utility from modifying a pro forma adjustment during the course of a rate case. The purpose of Part 287.40's "individually identified and supported" requirement is to ensure that Staff and other interested parties are put on notice of and have ample opportunity to review a utility's pro forma adjustment. Consumers Illinois Water Company ("CIWC"), Docket 93-0253, 152 P.U.R. 4th 131, 1994 Ill. PUC LEXIS 207, at *14 (May 11, 1994) ("[Pro forma adjustments must be identified with specificity and documented as known and measurable sufficiently early in the process to permit the Staff and interested parties an adequate opportunity to review them and to prepare their case."). The AIU complied with Part 287.40 in letter and in spirit by identifying an adjustment and underlying support in supplemental direct testimony. The AIU did not propose a pro forma adjustment to pension and benefits expense for the first time on rebuttal or surrebuttal. The AIU did not revise their adjustment late in the case based on new evidence. And the AIU did not wait until the eve of hearing to provide Staff with the actuarial report that supports the adjustment. Staff cannot claim in hindsight that it was prejudiced by an offer of compromise that it specifically rejected weeks prior to hearing. Nor can Staff complain that it did not have time to review an actuarial report already in its hands before it filed its direct case.

The AIU proposal in supplement direct testimony was based on the July 2009 actuarial report. This report provides an evidentiary basis for an adjustment based on 2010 estimated expense, as well as an adjustment based on actual expense through September 2009. The AIU eventually selected one position over the other, but the underlying evidence for both proposals is the same. Staff's position is that because the July 2009 report is not the final report for the calendar year, the report does not present known and measurable expense levels for *any* period. Thus, the disputed issue with regard to the pension adjustment has always centered on what weight should be given to the July 2009 report, and not which period (12 months ending September 2009 vs. calendar year 2010) is the more appropriate period to use as a proxy for test year pension and benefits expense. Indeed, Staff has *not* argued that the AIU adjustment was not properly identified in the AIU's direct case. The Order is in error by concluding otherwise. There is no basis in the record to find that the pro forma adjustment for pension and benefits was not, as a matter of procedure, individually identified and supported in the AIU's direct case.

B. *The AIU's Pro Forma Adjustment To Pension And Benefits Expense Was Known And Measurable During The Initial Phase Of This Proceeding.*

The Order also finds that Staff "raised valid concerns about whether AIU's proposed pro forma adjustment constitutes a known and measurable change." Order, p. 90. This finding is also wrong, for at least three reasons. First, the Commission routinely relies on the most recent actuarial data available as support for pro forma adjustments to pension and benefits expense, regardless of whether the most recent data available is a final report for a calendar year. No party disputes that the July 2009 actuarial report was the most recent actuarial data available at the time of the initial hearings. Second, no party disputes that the amounts actually booked for pension and benefits expense match the amounts recorded in the July 2009 actuarial report. Third, no party disputes that although workforce reductions are not reflected in the July 2009 actuarial report, the Order approved a reduction in test year pension and benefits expense associated with workforce reductions.

1. The Commission Regularly Relies Upon The Latest Available Actuarial Data When Adjusting Test Year Pension And OPEB Expense.

Staff admits that the July 2009 report was the latest available actuarial data at the time the AIU proposed the pro forma adjustment. (Reh. Tr. 168:6-9 (Ebrey).) Staff, however, has maintained that only a final, year-end actuarial report is sufficient to support a pro forma adjustment to pension and benefits expense. (ICC Staff Ex. 15.0, p. 18; Tr. 753-54; Reh. Tr. 170-71). Staff's argument cannot be squared with prior Commission orders or with adjustments that Staff itself has proposed or accepted in prior cases.

As recognized (and advocated) by Staff, the Commission regularly relies upon the latest available actuarial data in approving adjustments to pension and benefits expense. (Reh. Tr. 172:16-20 (Ebrey)) ("Staff and Illinois utilities have consistently agreed that pension expense should be updated based on the latest actuarial evaluation . . . ."); see also, North Shore/Peoples, Docket 09-0166/0167, NS-PGL Ex. CMP-1.0, pp. 2, 5 (providing updated actuarial report on rebuttal); ComEd, Docket 07-0566, ComEd Ex. 7.0, p. 40 (pro forma adjustment for pension and benefits expense of approximately $14.8 million based on a mid-year updated actuarial analysis); North Shore/Peoples, Dockets 07-0241/0242, Order (Feb. 5, 2008), p. 35 (pro forma adjustment to reduce test year pension expense based on most current available actuarial data for 2007); Northern Illinois Gas Co., Docket 95-0219, 1996 Ill. PUC LEXIS 204, at *55 (Apr. 6, 1996) (relying on actuarial studies "based on the latest available information" and "prepared independently of the Company"); Illinois Power Co., Docket 93-0183, 151 P.U.R. 4th 281, 1994 Ill. PUC LEXIS 139, at *87 (April 6, 1994) (relying on a revised actuarial study presented on rebuttal as "the most recent estimate of pension expense that is supported by an actuarial study"); Peoples Gas Light and Coke Co., Docket 91-0586, 1992 Ill. PUC LEXIS 376, at *66 (Oct. 6, 1992) (relying on the most recent actuarial valuation presented on rebuttal because "the most current information available is the most accurate").[10] The AIU have searched in vain for any prior Commission order specifically stating that *only* final calendar year actuarial reports are sufficient to meet the known and measurable standard.

Staff claims that amounts in the July 2009 report were "estimates" that are not known and measurable for ratemaking purposes. (Reh. Tr. 169:11, 169:18, 170:9 (Ebrey).) The expense amounts for the 12 month period ending September 30, 2009 were far from "estimates." These amounts were actuarially determined, fixed and booked before the initial evidentiary hearing in this proceeding. But even if the amounts in the July 2009 report were "estimates," Staff itself has proposed adjustments to historical test year pension and OPEB expense based on post-test year "estimates" in other proceedings. In Docket 05-0597, for example, Staff recommended a *downward* adjustment to ComEd's pro forma adjustment for pension expense based on 2005 estimated expense in a 2004 actuarial report. (Reh. Tr. 173:10-16 (Ebrey); Ameren Cross Ex. 2,

[10] Staff also acknowledges that use of post-test year data to establish expense is consistent with the AIU's two most recent rate cases, Dockets 07-0585 - 0590 (adjusted 2004 test year expenses with 2005 actual costs) and 06-0070 - 0072 (adjusted 2006 test year expenses with 2007 actual costs). (Tr. 757:12-16 (Ebrey).)

p. 13.)[11] Staff's claim that 2009 expense amounts were "estimates" that could have changed upon issuance of the year-end 2009 report – even if it were true – simply rings hollow. Staff's insistence on ignoring recent actuarial data is completely at odds with the Commission's prior practice and, for that matter, Staff's recommendation to the Commission in prior cases.

2. Actuarial Data for the 12 Months Ending September 30, 2009 Supports a Known and Measurable Change in Pension and Benefits Expense.

The July 2009 valuation not only contained the latest available actuarial data, but also established as known and measurable the AIU's pension and OPEB expense for calendar year 2009. As the AIU discussed in prior testimony (and again in rehearing testimony), pension and OPEB expense for the current fiscal year is based on employee census data, plan asset values, and financial market conditions as of the last day of the prior fiscal year. (Ameren Ex. 54.0 (Lynn Sur.), pp. 4-5; Ameren Ex. 8.0RH (Lynn Dir.), pp. 4-6.) Thus, the AIU booked 2009 expense amounts relying on independent actuarial valuations using data as of December 31, 2008. (Id.) Actual plan asset values and financial market conditions (and estimated employee census data) as of December 31, 2008 were available in January 2009. (Id.) Actual employee census data as of December 31, 2008 was available prior to the issuance of the July 2009 valuation. (Id.) Thus, by the time that the July valuation was issued, all actual data from the prior fiscal year (2008) was available to set expense amounts for the current fiscal year (2009).

From the outset of this case, Staff's chief complaint about the pro forma adjustment has been that 2009 amounts changed between the January 2009 and July 2009 reports. (See, e.g., ICC Staff Ex. 1.0, p. 26.) But in relying on these changes to reject the adjustment as not known

[11] The actuarial report that Staff relied on in Docket 05-0597 for its downward adjustment is analogous to the January 2009 actuarial report that the AIU relied on in their original direct filing. The January 2009 report included final data for calendar year 2009, and estimated data for 2010. Although Staff rejected the AIU proposal to adjust pension expense based on 2010 estimated data, in Docket 05-0597, Staff relied on 2005 estimated data contained in a final actuarial report for 2004.

and measurable, Staff has ignored that the amounts for the current fiscal year almost always change between the January and July reports to reflect the difference between the prior year's estimated and actual employee census data. (Ameren Ex. 54.0 (Lynn Sur.), pp. 4-5; Ameren Ex. 8.0RH (Lynn Dir.), pp. 6-7; Ameren Ex. 8.2.) After issuance of the mid-year report, however, expense accruals for the first and second quarters will never change and accruals for the third and fourth quarters are set and will only change upon the rare occurrence of a significant plan event. (Id.) Thus, the amount of pension and OPEB expense booked for any fiscal year is known and measurable upon the issuance of the mid-year report.

Staff suggests that the AIU failed to demonstrate that the actuarially determined "expense amounts *could* not change." (ICC Staff Ex. 3.0RH-R (Ebrey Supp. Reb.), p. 3 (emphasis in original).) But Staff's assertion does not have a basis in either the record or the rule. Part 287.40 does not require that the utility eliminate any possibility that the actual change in expense could differ from the proposed adjustment; the utility must only demonstrate that the change is "reasonably certain" to occur at a measurable amount. Any number of unplanned occurrences could cause even the most certain of expected costs to change. But regardless of the AIU's burden, in this instance, the AIU demonstrated that the requested expense *would* not change and *did* not change. As the AIU's actuarial expert explained, only a significant plan event can result in a change in expense accrued and booked in the current fiscal year, and even then only in the financial quarter in which the event occurs. (Ameren Ex. 54.0, p. 5; Ameren Ex. 8.0RH, p. 8.) But no such "significant plan event" occurred in the third quarter of 2009 after issuance of the July 2009 report. (Ameren Ex. 54.0, pp. 3-4.) And even if a "significant plan event" had occurred in the fourth quarter of 2009, such an event would have impacted only expense amounts for that quarter and would not have impacted amounts for prior quarters. Thus, by the time the

AIU submitted rebuttal testimony in October 2009 in the initial phase of this proceeding, the pension and OPEB expense for the 12 month period ending September 30, 2009 was final and not subject to change. As the AIU's actuary stated, the amounts recorded through September 30, 2009 "will not change" prior to the hearings in December 2009. (Ameren Ex. 54.0, line 133.)

In the initial phase of this proceeding, Staff acknowledged the expense sought by the AIU through September 2009 was "based on the amounts actually recorded on the books of the AIU." (ICC Staff Ex. 15.0, p. 19.) On rehearing, Staff concedes that the pension and benefits expense recorded through 2009 was "known prior to hearings in December 2009." (Ameren Ex. 18.2RH.) The existing record prior to rehearing provides a sound, supportable basis for the AIU pro forma adjustment. The AIU rehearing testimony merely confirms what the AIU said before rehearing: the AIU are requesting the actual expense booked for the twelve months ending September 30, 2009 -- no more, no less -- in an amount that equals the quarterly accruals as calculated by the AIU's actuary. (Compare Ameren Ex. 5.3RH with Ameren Ex. 8.2RH.)

3. The "Workforce Reduction" Already Adjusted Estimated 2010 Expense To Deduct The Expense For Separated Employees.

Staff now questions the reliance on any actuarially-determined and booked pension and benefits expense for 2009 because the final actuarial report for 2009 did not account for a workforce reduction in the fourth quarter of 2009. (ICC Staff Ex. 3.0RH-R, pp. 3-5.) Staff raises this concern, even though the AIU repeatedly have testified that the workforce reduction, even if it had been a "significant plan event," would have only impacted expense for the fourth quarter 2009. The expense booked for the twelve month period ending September 30, 2009 would not have been affected. But as Staff knows, and as explained by the AIU's actuary and Controller, the separations did not meet the materiality threshold under generally accepted accounting principles to be considered a "significant plan event." (Ameren Ex. 8.0RH, pp. 8-9;

Ameren Ex. 18.4RH.) So even if Ameren had executed the workforce reduction prior to the fourth quarter of 2009, it would not have impacted 2009 expense. And it would have defied accounting principles for Ameren to adjust current expense for a non-material event. Any non-material change in employee headcount in 2009 – or any non-material event whatsoever – would have only impacted expense in 2010. (Ameren Ex. 8.0RH, p. 8.)

Staff, however, suggests that actuarially-determined pension and OPEB accruals for 2009 are not "known and measurable for rate marking purposes" because, regardless of whether the workforce reduction was material for actuarial purposes, it was material "for rate making purposes." Staff makes this suggestion, despite the fact that it cannot identify a single prior example where a workforce reduction during the calendar year used to set expense impacted accrued expense for that year. (Ameren Ex. 18.0RH (Stafford Supp. Reb.), pp. 5-6.) Nor does Staff explain what the Commission should use to establish a utility's pension and OPEB expense when a workforce reduction has occurred, if not the utility's actuarially-determined expense accruals. Indeed, since non-material changes in employee headcount affect expense accruals for the following fiscal year (and not the current year), Staff has failed to articulate a sensible rationale why the actuary's accruals should be cast aside anytime a workforce reduction occurs.

Even if it were appropriate "for rate making purposes" to adjust pension expense based on immaterial and out-of-period workforce reductions, Appendix H of the Order already reduces pension and benefits for costs associated with the workforce reduction. (Ameren Ex. 18.0RH, p. 7; Ameren Ex. 18.3RH.) Indeed, the very purpose of the workforce reduction related to pension expense was to make a regulatory adjustment to operating income to deduct future expenses for separated employees. (Id.) In fact, the reduction shown on Appendix H was based on the elimination of higher 2010 estimated expense, rather than lower 2009 or even 2008 levels. (Id.) Any further adjustment based on the workforce reductions would result in double counting.

The existing record and record on rehearing readily establish that the AIU pro forma adjustment to pension and benefits expense is both legally appropriate and fully consistent with past Commission practice. The Order on Rehearing should accept this adjustment.

IX. Clarifications concerning the Public Utility Revenue Act ("PURA") tax and its Recovery in Light of the Commission's Expressed Intent.

Regarding PURA tax recovery, the Commission's intent is clearly stated in the NOCA, as follows:

> (8) With regard to the Public Utility Revenue Act ("PURA") tax and its recovery, it was the Commission's intent in its Order to exclude the PURA tax from the revenue requirement, treat the PURA tax as a pass through tax, have the PURA tax recovered through a volumetric charge, and have the PURA tax separately identified as a line item on the customer's bill as other pass-through taxes are identified.

The Commission further instructs, given its express intent, that the parties may seek clarification on rehearing regarding this issue.

The AIU's proposals with respect to PURA tax recovery, consistent with the Commission's intent, are set forth in the testimony of AIU witness Mr. Leonard Jones, as is the related proposal to conform rates to the final revenue requirement. (Ameren Ex. 10.0RH (Jones Dir.), p. 3.)

A. *PURA Tax Recovery*

Exclusion of PURA Tax from Revenue Requirement

Mr. Jones explains that under the AIU's presently effective tariffs (implemented per the Order), the PURA tax is not entirely excluded from base rate revenue requirement. (Ameren Ex. 10.0RH, p. 3.) The details of the presently stated rates and how they were developed pursuant to the Commission's May 6, 2010 Order is detailed in Mr. Jones direct testimony on rehearing. (Id., pp. 3-6.) Pursuant to the NOCA, Mr. Jones proposes to fully exclude the PURA tax from the AIU's revenue requirement so that base delivery service rates will not recover any Distribution Tax expense. In other words, the intent is for the Distribution Tax to be fully unbundled from the rest of the delivery service revenue requirement and pricing. (Id., p. 10.)[12] Price changes are required to implement this step. Absent price changes, certain amounts would otherwise be recovered in the base delivery service rates. (Id., p. 11.) The AIU therefore propose that DS-1 and DS-2 Distribution Tax be adjusted as described by Mr. Jones at Ameren Exhibit 10.RH, p. 11.

The AIU's and Staff's presentation of the AIU's revenue requirement on rehearing excludes the PURA tax in its entirety, and no further adjustment to the rehearing revenue requirement is required to remove PURA tax. (Ameren Ex. 17.0RH (Jones Reb.), lns. 76-78; ICC Staff Exs. 1.01RH CILCO-E; 1.01RH CIPS-E; 1.01RH IP-E; Ameren Rehearing Appendices A-C, Sch. 1.) In addition, in his rehearing testimony, Mr. Jones proposes that Distribution Tax Charges that are collected pursuant to the Tax Additions Tariff equal the actual PURA tax expense. (Ameren Exs. 10.0RH, pp. 12-13; 17.0RH, pp. 8-9.) Mr. Jones' tariff proposal provides for the prospective offset to the PURA tax amount by the actual credit memo value for the applicable period. (See Ameren Exs. 10.0RH, pp. 11, 13; 10.2RH.)

Clarification of Amount of PURA Tax - Credit Memorandum

On behalf of the IIEC, Mr. Stephens argues that the AIU is currently collecting $4 million more related to the PURA tax than authorized pursuant to the Commission's Order.

[12] The appropriate level of Distribution Tax is $22,371,000 for AmerenIP, $15,451,000 for AmerenCIPS, and $5,139,000 for AmerenCILCO. (Ameren Ex. 10.RH, p. 9.) This means that amounts of $22.37 million, $15.45 million, and $5.14 million should be recovered from customers of the respective utilities. (Id., p. 10.)

(IIEC Ex. 9.0RH, p. 2). Mr. Stephens suggests that the Commission address the alleged over-collection by providing for retroactive rate treatment in its final order on rehearing. (Id., pp. 2, 7.)

As discussed above, the AIU's present proposal on rehearing would reduce the actual PURA tax expense by the applicable credit memorandum going forward. As Mr. Jones asserted, the AIU did not have the discretion to unilaterally address the proper treatment of the PURA tax credit memoranda at the time the Order was issued. (Ameren Ex. 17.0RH, pp-11-12.) As Mr. Jones points out, the AIU are not requesting a surcharge to make up for corrections increasing the revenue requirement after the April 29, 2010 Final Order. (Id.)

Moreover, once the Commission establishes rates, the Act does not permit refunds if the established rates are too high, or surcharges if the rates are too low. BPI I, 136 Ill. 2d at 209. This proposal is therefore contrary to Illinois law and should be rejected in light of the clear authority specifically prohibiting retroactive ratemaking in Illinois. Citizens Utility Co. of Illinois vs. Illinois Commerce Comm'n (1988), 124 Ill.2d 195, 207 ("[A] public utility is required to charge the rates determined by the Commission . . . . The rule prohibiting retroactive ratemaking is consistent with the prospective nature of legislative activity, such as that performed by the Commission in setting rates…").

By specifically asking the Commission to effectuate reparations for an error in the final rate schedules, the IIEC is requesting the Commission to violate the prohibition against retroactive ratemaking. Accordingly, the IIEC's request should be rejected.

Treatment As Pass Through Tax

In order for the PURA tax to be treated as a "pass through tax," it is necessary that costs and recovery are matched and "period expenses are balanced against period revenues." (Ameren

Ex. 10.RH, p. 13.) A "pass through" means that customers will pay the exact amount of tax assessed for the period. (Ameren Ex. 17.0RH, pp. 3-4.)

To accomplish the goal of recovering the PURA tax as a pass through tax, the AIU have included the recovery provisions associated with the PURA tax within its Tax Additions Tariff. (Ameren Ex. 10.1RH.) The AIU Tax Additions Tariff provides for the collection of excise taxes from state and municipal entities. (See Ameren Ex. 17.0, pp. 9-10.) Other taxes collected pursuant to that tariff are remitted and collected on an ongoing basis, but the PURA taxes are assessed on an annual basis based on total annual kWh sales. (Ameren Ex. 10.0RH, p. 14.) Accordingly, the AIU designed recovery of PURA tax expense to operate in a manner where it will be collected on an ongoing basis. (Id., p. 10-11) This approach assures that the collection of PURA taxes will be recovered in similar fashion to the other taxes collected pursuant to the AIU's Tax Additions Tariff. To assure the Commission that the charges assessed will match the taxes paid by the AIU, the AIU proposal provides for informational sheets to be filed with the Commission on a periodic basis, and further provides for an annual reconciliation should the Commission decide it is necessary to review the associated calculations and accounting. (Ameren Ex. 17.0RH p. 13; Ameren Ex. 10.2RH.) The informational filing ensures that the tax is, indeed, being passed through. Finally, the AIU will collect the PURA tax expense based on a per-kWh basis, and separately identify it on customer bills. (See Ameren Exs. 10.0RH, pp. 4-5; 10.1RH.) Thus, the AIU's proposal satisfies all elements of the Commission's stated intent.

Staff argues that the characterization of the tax "…as a pass through does not mean that it expects the AIU's to true up the recovery of these costs from ratepayers and institute a reconciliation process." (ICC Staff Ex. 2.0RH, p. 5.) Staff recommends that the PURA tax be assessed to customers as a static charge on customer bills in a manner whereby the actual amount collected from customers for any given period will not bear a direct correlation to the amount of tax expense paid by the AIU. (Id., pp. 4-6).

Staff's proposal, however, does not squarely address the Commission's stated intent. The AIU can conceive of no other means to *pass through* its tax liability directly to customers.[13] As noted by Mr. Jones:

> The term 'pass through' indicates to me there should be a matching of period costs incurred and period revenues. In other words, the Commission intends that the AIU will pass through its PURA tax liability to customers without departure from actual taxes assessed. (Ameren Ex. 17.0RH, p. 3.)

Further, Mr. Lazare's focus on the term "pass through" ignores the broader context of the terms and does not give any weight to the other elements of the Commission's stated intent. In particular, he ignores the significance of the Commission's instruction to exclude the PURA tax from the revenue requirement, separately state the PURA tax on customer bills, and its directive to treat the PURA tax as a pass through tax.

If the Commission truly intended the PURA tax to be merely a static charge separately stated as a line item, there would be no practical reason for removing the tax expense from AIU revenue requirements. As Mr. Jones explains, by way of example, the AIU have a separately stated meter charge, and there is no similar proposal to remove the associated costs from revenue requirement. (Ameren Ex. 10.0RH, p. 14.)

Further, Mr. Lazare fails to explain how revenue collected from customers pursuant to a bill item identified as a "tax" could justifiably depart from the actual taxes paid by the utility. As the charge on customers' bills will not be matched to period tax expenses under Staff's proposal, customers would potentially pay the utility an amount in excess of the actual tax assessed. In

[13] While the AIU offers an affirmative response to Staff's interpretation of the NOCA in the forgoing, Mr. Lazare agreed that to the extent the AIU's interpretation of the NOCA be deemed correct, the AIU's proposal for reconciliation and true-up is reasonable. (Ameren Ex. 17.1RH, p. 3.)

other words, the utility should not earn a profit or take a loss on a tax line item. Customers should be able to expect that amounts paid under the taxes column on their bill actually pay for taxes – no more, no less. Mr. Lazare also ignores the intention of the Commission to *treat* recovery of the PURA tax as a pass through tax, in similar fashion to other tax line items. As noted by Mr. Jones, other tax line items on customer bills do not depart from actual tax liability. (Ameren Ex. 10.0RH, p. 14.) Therefore, to have the PURA tax collected as a static charge would serve to treat the PURA tax in a manner disparate from other excise taxes contained in the AIU's tax additions tariff.

IIEC argues that the NOCA does not mention the implementation of a reconciliation provision. (IIEC Ex. 9.0RH, pp. 5-6.) The AIU address this argument above in its response to the testimony of Mr. Lazare and will not restate those arguments here. In response to Mr. Stephens, the AIU would further note that the NOCA clearly does not prohibit the use of a reconciliation as a means to effectuate its stated intent.

Mr. Stephens also argues that the PURA tax is distinguishable from other taxes collected as part of the Tax Additions Tariff. The AIU would agree with Mr. Stephens only to the extent, as Mr. Jones points out, that the PURA taxes are assessed as an annual tax obligation rather than being collected and remitted on an ongoing basis. (Ameren Exs. 17.0RH, pp. 9-10; 10.0RH, p. 14-15.) However, Mr. Stephens incorrectly analogizes the PURA tax to income or real estate taxes. The PURA tax and other taxes collected pursuant to the AIU tax additions tariff can all be classified as excises taxes, distinguishable from taxes assessed on the basis of property ownership or income.

An excise tax is a tax imposed on a particular activity, such as sales or consumption, and is distinguishable from property and income taxes. See Black's Law Dictionary (8th Ed., 2004);

United States v. Mastercases of Cigarettes. 448 F.3d 1168, 1185 (2006); Buckstaff Bath House Co. v. McKinley, 198 Ark. 91, 127 S.W.2d 802, 806 (1939); Twin Hills Golf and Country Club, Inc. vs. Town of Forest Park, 123 P.3d 5, 8-9 (2005). The PURA tax, as provided for by Public Utilities Revenue Act (620 ILCS 620 et seq.), is assessed on the activity of delivering electricity and thus is clearly a variety of excise tax. Therefore, the PURA tax shares commonality with the other taxes contained in the AIU Tax Additions Tariff, and is clearly distinguishable from income and real property tax expenses paid by the AIU.

Further, Mr. Stephens general criticisms fail to explain: (1) A method for excluding the tax from revenue requirement, (2) how to treat the PURA tax as a pass through tax, (3) how to collect it in a volumetric manner, or (4) in what manner it should be separately identified with other pass through taxes. (See Ameren Ex. 17.0RH, pp. 9-10.) To the contrary, Mr. Stephens' testimony only criticizes the AIU for attempting to accomplish those ends.

Both Staff and IIEC suggest that a reconciliation could be administratively burdensome. As Mr. Jones explains, however, the proposed true-up provisions are very simple to administer. (Id., p. 13.) The AIU's present tariffs contain several routine rate mechanisms where period costs are balanced against period revenues, and differences are trued-up in forward looking prices (e.g., Rider PER, Rider HSS, Rider EEA, Rider EUA, UCB/POR provisions within Supplier Terms and Conditions). The true-up for the Distribution Tax would operate similar to these other routine adjustments. (Id.)

Therefore, to implement the Commission's stated intent with respect to PURA tax, the AIU request approval of the tariff language proposed in Ameren Ex. 10.2RH.

B. *Conformance of Electric Rates to Final Revenue Requirement*

The AIU's proposal for conforming electric rates to the final revenue requirement is as follows. First, the AIU will rerun the embedded cost of service model to determine each class' responsibility of the revenue requirement (Order, p. 252). (Ameren Ex. 10.RH, p. 12.) Second, the rate moderation/mitigation plan, where the increase to any class, or DS-3 and DS-4 "subclass," should continue to be limited to no more than 150% of the system average increase (Order, p. 295). (Ameren Ex. 10.RH, p. 12.) Third, the adjustments to individual price components should follow the conclusions of the rate design section (Order, p. 287), except instead of further adjustments to the Distribution Tax Charges for DS-4, only Distribution Delivery Charges should be adjusted. (Id., p. 12-13.) Thus, the "final" base distribution tax rates established in this proceeding for each class are as follows:

Final Distribution Tax Rates Required to Recover Test Year Expense

Rate	AmerenIP	AmerenCIPS	AmerenCILCO
DS-1	$ 0.00197	$ 0.00196	$ 0.00136
DS-2	0.00197	0.00196	0.00136
DS-3	0.00138	0.00129	0.00090
DS-4 Primary	0.00062	0.00062	0.00034
DS-4 High Voltage	0.00044	0.00037	0.00018
DS-4 +100 kV	0.00010	0.00010	0.00003
DS-5	0.00138	0.00129	0.00090

(Id., p. 13.)

Again, the Distribution Delivery Charges for DS-1 through DS-4 would be scaled up or down to achieve the revenue requirement targets produced under the rate moderation/mitigation methodology – no other charges would change. (Id.) Eliminating the DS-4 Distribution Tax as a potential changing variable will provide assurance to the Commission that the base Distribution Tax Charge values recover Distribution Tax expense, and simplify development of final compliance rates resulting from this proceeding. (Id.)

For electric rates, Staff believes the Commission should deviate from the approach previously approved and, similar to the approach for the gas utilities, also apply an equal percentage scalar to all prices in order to achieve the final revenue requirement. (Ameren Ex. 17.0RH, p. 5.) Specifically, Staff witness Mr. Lazare sets out his proposal as follows:

> I would first employ the across-the-board approach on all current charges, including the separate charge for the PURA tax to generate total revenues for the revenue requirement and the PURA tax. Then I would increase the PURA tax charges for DS-1 and DS-2 by an equal amount to produce the target level of revenues for the tax. Finally, I would reduce the volumetric delivery charges for DS-1 and DS-2 customers by a corresponding amount to insure that the adjustment to the PURA taxes has no impact on overall bills for these customers.
> (ICC Staff Ex. 2.0RH, Lines 185-191)

Staff's proposal, however, runs counter to the Order. First, Mr. Lazare's approach would undo considerable rate uniformity in several charges among the AIU. Mr. Lazare's approach would result in each of the AIU charging electric customers different prices for Customer, Meter, Transformation, and Reactive Demand charges. (Ameren Exs. 17.0RH, p. 5; 17.1RH, p. 4, Resp. to Data Request to AIU-ICC 42.02) This would occur just a few weeks after the AIU merge into a single utility.[14] In the Order, the Commission approved uniform Customer, Meter, Transformation, and Reactive Demand charges among the AIU. Order, p. 287. Indeed, the AIU proposed to reinstate uniform Customer and Meter Charges for the residential class, in part at the urging of the Commission in the Order in Docket 07-0585 (cons.). Order, Docket 07-0585 – 07-0590 (cons.), p. 280. Now, when rate uniformity can be moved forward, the Commission should disregard a proposal that would eliminate price uniformity. (Ameren Ex. 17.0RH, p. 6.)

[14] The proposed AIU' restructuring is scheduled to become effective on October 1, 2010 and this rehearing process is scheduled to be complete by November 12, 2010.

Next, Mr. Lazare's proposal is an attempt, perhaps unintended, to revisit a position that was not approved in the Order. (Ameren Ex. 17.0RH, p. 6.) Instead, the Commission chose to implement the AIU's proposal (Order, p. 287), which addresses subsidy elimination, rate continuity, and bill impact concerns. Order, p. 284.

Staff's approach also ignores the impact on rates due to the rate limiter provisions present within DS-3 and DS-4. (Ameren Ex. 17.0RH, p. 6.) Any change to the Distribution Delivery Charges or Transformation Charge will trigger a change to the amount of "limited revenue", since DS-3 and DS-4 customers' bills are limited so that the average ¢/kWh for the sum of monthly Distribution Delivery Charges and Transformation Charges does not exceed 2.6¢/kWh, 2.15¢/kWh, and 1.975 ¢/kWh for AmerenIP, AmerenCIPS, and AmerenCILCO DS-3 and DS-4 customers, respectively. (Id.) In the Order, the Commission agreed with the approach to set the DS-3 and DS-4 rate limiter values at a level that produced approximately the same dollar amount of "limited revenue" generated under present rates. (Order, pp. 313-314; Ameren Ex. 17.0RH, p. 7.) The same recalculation should be done upon learning the final revenue requirement in this rehearing proceeding. As Mr. Jones explained, it would be appropriate to follow the steps to determine the final rates approved in the Order, with slight modifications discussed in his direct testimony on rehearing. (Ameren Ex. 17.0RH, p. 7.) The approach approved in the Order balanced many competing interests, and should not be upended now.

C. *Conformance of Gas Rates to Final Revenue Requirement*

In the event that overall gas revenue requirements for the AIU change from that currently in effect, the methodology approved on page 261 of the Order should be used to conform rates. Specifically, rates would be scaled by an equal percentage to achieve the final revenue requirement target for each of the AIU. (Ameren Ex. 10.RH, p. 16.) For gas rates, Staff appears to be in agreement that rates should be scaled by an equal percentage to achieve the final revenue requirement target for each of the AIU. (Ameren Ex. 17.0RH, p. 5.) This is the same approach approved by the Commission and used by the AIU to adjust proposed prices to recover the final gas revenue requirement in the initial phase of the rate case.

X. Conclusion

For the reasons discussed above, the AIU's proposed adjustments on rehearing should be accepted consistent with the schedules submitted in the AIU's August 27, 2010 response to the Post-Record Data Request, dated August 18, 2010.

Dated: September 3, 2010

Respectfully submitted,

CENTRAL ILLINOIS LIGHT COMPANY d/b/a AmerenCILCO, CENTRAL ILLINOIS PUBLIC SERVICE COMPANY d/b/a AmerenCIPS, ILLINOIS POWER COMPANY d/b/a AmerenIP

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CERTIFICATE OF SERVICE

I, Mark A. Whitt, an attorney, hereby certify that on September 3, 2010, I served a copy of the foregoing INITIAL BRIEF ON REHEARING OF THE AMEREN ILLINOIS UTILITIES by electronic mail to the individuals on the Commission's Service List for Dockets 09-0306 – 09-0311.

By: *__/s/ Mark A. Whitt__*
One of its attorneys